



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 17, 1996

Mr. Jeff Herrington
Criminal District Attorney
Anderson County, Texas
500 North Church Street
Palestine, Texas 75801

OR96-0972

Dear Mr. Herrington:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 40276.

The Anderson County Sheriff's Department (the "department") received a request for information seeking all records showing the income and expenditures for the Anderson County D.A.R.E. program from June 1, 1994 to the present. You claim that the requested information is excepted from required public disclosure by section 552.103 of the Government Code. You have submitted the documents responsive to the request for information for our review.

Section 552.103(a) excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The department has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision

No. 551 (1990) at 4. The department must meet both prongs of this test for information to be excepted under 552.103(a).

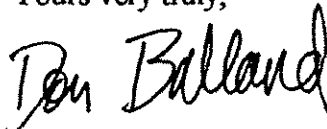
In this instance, you state that the Sheriff, the District Attorney, and several other defendants have been sued by the former Drug Task Force Commander. You have provided this office with a copy of the petition in that case. The petition alleges, among other things, that the Sheriff has failed to account for several thousand dollars generated by the D.A.R.E. program. After reviewing the submitted materials, we conclude that litigation is pending and that the requested information is related to that litigation. The requested information may, therefore, be withheld pursuant to section 552.103.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed.

Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref.: ID# 40276

Enclosures: Submitted documents

cc: Mr. Jackie L. Gates
Questions and Answers
Route 7 Box 7099
Palestine, Texas 75801
(w/o enclosures)